IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 596 of 2007
IN
SPECIAL CIVIL APPLICATION No. 3988 of 2005
WITH
CIVIL APPLICATION No. 3913 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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MILL MAZDOOR SABHA - Appellant
Versus
M/S RUSHBH PRECISION BEARING LTD & 2 - Respondents

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Appearance :
MR TR MISHRA WITH MR KR KOSHTI for Appellant.
MR KS NANAVATI, SENIOR ADVOCATE FOR NANAVATI ASSOCIATES for Respondent No. 1.
None for Respondents : 2 - 3.
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CORAM :	HONOURABLE MR.JUSTICE A.M.KAPADIA
	and
	HONOURABLE MR.JUSTICE K.A.PUJ

Date :18/06/2007
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. The appellant – orig. respondent No. 1 has filed this appeal under Clause 15 of the Letters Patent challenging the judgment and order dated 23.03.2007 passed by the Learned Single Judge in Special Civil Application No.3988 of 2005 quashing and setting aside the award dated 30.08.2002 passed by the Industrial Tribunal, Rajkot in Reference (IT) No. 46 of 2002 and remanding it to the Tribunal for hearing and deciding afresh in respect of the workmen of the present respondent – original petitioner, namely, M/s. Rushbh Precision Bearing Limited only. While remanding the matter, the

Learned Single Judge has clarified that both the parties shall be at liberty to approach the appropriate Government to suitably modify the reference made to the Tribunal. The Learned Single Judge has further clarified that the workmen of SRS Bearings Industries and SRS Engineering Industries shall be at liberty to raise industrial dispute against the respective industry. It is further observed that if such a dispute is raised, the appropriate Government shall consider and process the same in accordance with law. The Learned Single Judge has directed that the sum of Rs.20 Lacs deposited in this Court and invested by Registry shall continue to be invested until the reference is heard and decided afresh by the Tribunal and it shall be subject to the decision of the Tribunal. The Registry was directed to transfer the said sum of Rs. 20 Lacs to the Tribunal. The Learned Single Judge has further directed that the present respondent – original petitioner Company shall pay a cost of Rs.1,000/- to each workman employed by it i.e. the employees of the present respondent – original petitioner M/s.

Rushbh Precision Bearing Limited within four weeks from the date of the said order.

2. On behalf of the respondent – original petitioner, caveat was filed by M/s. Nanavati Associates. Hence, the Court has heard Mr. T.R. Mishra, learned advocate with Mr. K. R. Koshti, learned advocate appearing for the appellant and Mr. K. S. Nanavati, learned Senior Advocate for M/s. Nanavati Associates for the respondent – original petitioner Company at length at the admission stage.

3. The brief facts giving rise to the present appeal are that the whole dispute arose way back on 16.09.1999 when the appellant Union went on strike which was illegal according to the respondent Company. The respondent Company, therefore, immediately on the same day displayed notice on the notice board requesting the workmen to resume duties and also sent copies of notices to the appropriate Government authorities informing them about the said strike. The appellant approached this Court by way of filing

Special Civil Application No. 7346 of 2000 alleging that the respondent Company had illegally closed down the undertaking and, therefore, challenged the said action. This Court vide its order dated 15.10.2000 directed that competent Court would initiate proceedings and thereby relegated the appellant Union to approach the appropriate authority.

4. The appellant Union thereafter approached the appropriate Government for adjudicating its grievance and a Reference (IT) No. 46 of 2002 was made before the Industrial Tribunal, Rajkot. The Industrial Tribunal, Rajkot vide its award dated 30.08.2002 directed the respondent Company to reinstate all the 324 workers on their original post with full back wages and further directed the Labour Court, Surendranagar to issue Recovery Certificate for recovery of the amount of salary. Pursuant to the award passed by the Industrial Tribunal, Rajkot directing reinstatement with full back wages and continuity of service, the appellant Union preferred

Recovery Application No. 146 of 2002 claiming back wages in terms of award and the said recovery application was decided on 15.03.2003 whereby the Recovery Certificate for an amount of Rs.4,93,26,260/ was issued being the amount recoverable for all 324 employees. Since the District Collector, Surendranagar was not taking any effective action to recover the said amount as per Recovery Certificate under the Bombay Land Revenue Code, the appellant Union filed Special Civil Application No.15255 of 2003 before this Court for attachment and auction of the plant of the respondent Company to recover the amount as per the award. This Court vide its order dated 12.10.2004 issued directions to the District Collector to proceed further with the Recovery Certificate in accordance with law. The respondent Company has thereafter filed Civil Application being Civil Application No. 8461 of 2004 for review of the said order as the original order was passed in absence of the advocate of the respondent Company. The said Civil Application came up for hearing on 07.12.2004

and this Court has refused to interfere with its order dated 12.10.2004 and the said application was accordingly rejected.

5. Being aggrieved by the rejection of the Civil Application, the respondent Company filed Letters Patent Appeal No.1190 of 2005 which was ultimately withdrawn on 16.09.2005.

6. In the meantime in March 2005, the respondent Company filed Special Civil Application No. 3988 of 2005 after about 2 and half years and on 06.04.2005 this Court issued conditional notice to deposit a sum of Rs.20 Lacs for hearing the matter on merit. The respondent Company did not deposit the said amount and, therefore, the said Special Civil Application was dismissed for non-compliance of the condition of depositing Rs.20 Lacs. The Letters Patent Appeal filed by the respondent Company against dismissal of the main petition was also dismissed on 01.12.2005.

7. Being aggrieved by the said dismissal order passed in the Letters Patent Appeal, the respondent Company filed Special Leave Petition before the Hon'ble Supreme Court wherein the respondent Company agreed to deposit a sum of Rs.20 Lacs. Thereafter, the Special Leave Petition was disposed on 03.01.2006 with a liberty to approach the High Court. The respondent Company filed Misc. Civil Application No. 3306 of 2006 in December 2006 for restoration of Special Civil Application No. 3988 of 2005 and on depositing the aforesaid amount of Rs.20 Lacs, the original petition was restored. On 06.03.2007, Special Civil Application No. 3988 of 2005 has been admitted and ad-interim relief suspending the operation, implementation and execution of the award was passed. Ultimately on 23.03.2007, the petition came to be finally disposed of in terms of the remand order with certain directions as stated earlier.

8. It is this order of the Learned Single Judge which is under challenge in the present Letters Patent

Appeal.

9. Before Mr. T.R. Mishra, learned advocate appearing for the appellant makes his submission, Mr. K. S. Nanavati, learned Senior Counsel appearing for the respondent has raised a preliminary objection against the maintainability of the Letters Patent Appeal filed by the appellant. The preliminary objection was to the effect that the Learned Single Judge, while deciding the petition, has exercised supervisory jurisdiction vested under Article 227 of the Constitution of India. The Learned Single Judge, while delivering the decision under challenge, has exercised power of superintendence under Article 227 of the Constitution of India. Therefore, in light of Clause 15 of the Letters Patent, the Letters Patent Appeal is not maintainable. According to Mr. Nanavati, the present respondent who is petitioner in the petition has challenged the award dated 30.08.2002 in Reference (IT) No. 46 of 2002 and also the Recovery Certificate issued by the Labour Court pursuant to the said award. The prayers made in the

petition also invoked supervisory jurisdiction of this Court under Article 227 of the Constitution of India. He has, therefore, submitted that the petition has not been filed invoking jurisdiction of the High Court under Article 226 of the Constitution of India. In support of his submission, he has relied on the decision of the Hon'ble Supreme Court in the case of *Surya Dev Rai V/s. Ram Chander Rai and Others, (2003) 6 SCC 675* wherein the Hon'ble Supreme Court has laid down three differences that exist between the powers to be exercised by the Court under Articles 226 & 227 of the Constitution of India. The Hon'ble Supreme Court has observed as under :-

"Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of

supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be, by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well."

10. The Hon'ble Supreme Court has further held that a writ of certiorari under Article 226 is issued for correcting gross errors of jurisdiction i.e. when a subordinate Court has acted without jurisdiction, by assuming jurisdiction where there exists none, or in exercise of its jurisdiction or in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice and thereby occasioning

failure of justice. The Hon'ble Supreme Court further held that neither a writ of certiorari or exercise of supervisory jurisdiction is available to correct mere errors of fact of or law unless (i) The error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and (2) a grave injustice or gross failure of justice has occasioned thereby. Thus, looking at the above principles as laid down by the Hon'ble Supreme Court, Mr. Nanavati has submitted that it becomes clear that the Learned Single Judge, in remanding the matter back to the Industrial Tribunal for taking a fresh decision in the matter, has exercised jurisdiction under Article 227 of the Constitution of India against which no appeal under clause 15 of the Letters Patent lies.

11. Over and above this, while hearing Letters Patent Appeal No.1205 of 2006, wherein similar such point of maintainability of appeal is involved our attention is drawn on the following decisions :-

(1) **Umaji Keshao Meshram and others Vs. Smt. Radhikabai and another, AIR 1986 S.C. 1272** (2) **Kanaiyalal Agrawal and others V/s. Factory Manager, Gwalior Sugar Company Limited, (2001) 9 SCC 609** (3) **Ishwarbhai Narottambhai Patel V/s. K. H. Trivedi & Ors. 2003 (3) GLR 1878** (4) **Steel Authority of India Limited V/s. Gujarat Mazdoor Panchayat and Another 2004 (1) GLR 729**. (5) **Life Insurance Corporation of India V/s. Pravinbhai Trivedi, (2006) 11 GHJ 161**.

12. Based on the aforesaid judgments, Mr. Nanavati has strongly urged that the present appeal deserves to be dismissed only on the ground of maintainability since appeal filed against the order or judgment passed in a petition whereby the Learned Single Judge has exercised his jurisdiction under Article 227 of the Constitution of India, is not maintainable.

13. While meeting with this preliminary objection, Mr.

T. R. Mishra, learned advocate appearing for the appellant has submitted that the present respondent has filed the petition under Article 226 & 227 of the Constitution of India. The preamble of the petition clearly indicates that while filing the petition, the present respondent has invoked the jurisdiction of this Court under the provisions of Article 226 & 227 of the Constitution of India. He has further submitted that the Learned Single Judge has also exercised the powers under Article 226 of the Constitution of India and nowhere it is stated that he was exercising the said powers under Article 227 of the Constitution of India. He has, therefore, submitted that the present appeal should be entertained on merits without being thrown out on the ground of non-maintainability. In support of his submission, he relies on the latest decision of the Hon'ble Supreme Court in the case of *Kishorilal V/s. Sales Tax Officer, District Land Development Bank and others, (2006) 7 SCC 496* wherein it is held that the Division Bench of the High Court wrongly dismissed the Letters Patent Appeal without noticing

that an appeal would be maintainable if the writ petition filed under Article 226 & 227 of the Constitution of India as was held by this Court i.e. Supreme Court in **Sushilabai Laxminarayan Mudliya V/s. Nihalchand Waghjibhai** ***, (1993) Supp. 1 SCC 11***.

14. So far as the merits of the matter is concerned, Mr. Mishra has submitted that the Learned Single Judge was not justified in entertaining the petition at the belated stage i.e. after two and half years, knowing fully well that the Industrial Tribunal has passed award on 30.08.2002. Even looking to the conduct of the present respondent who has not complied with the interim direction to deposit a sum of Rs.20 Lacs and took chance by filing Letters Patent Appeal and SLP before this Court as well as the Hon'ble Supreme Court, he should not have entertained the petition. So far as the delay in approaching this Court is concerned, Mr. Mishra has relied on the decision of the Hon'ble Supreme Court in the case of

State of M.P. & Others V/s. Nandlal Jaiswal and others, 1986 (4) SCC 566 wherein Hon'ble Supreme Court has observed that it is well settled that the power of High Court to issue an appropriate writ under Article 226 is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. The evaluation of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but

also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction.

15. Mr. Mishra further relies on the decision of the Hon'ble Supreme Court in the case of *M/s. Rup Diamonds and Others V/s. Union of India and others, 1989 (2) SCC 356* wherein while dismissing the petition, the Hon'ble Supreme Court has observed that apart altogether from the merits of the other grounds for rejection, the inordinate delay in preferring the claim before the authorities as also the delay in filing the writ petition before this Court should, by themselves, persuade us to decline to interfere. Mr. Mishra has further submitted that the present respondents are not supposed to explain each day delay as one may say that it is too technical but out of two and half years, even one month delay has not been explained while approaching this Court,

though the respondent has been appearing in other proceedings initiated by the present appellant.

16. Mr. Mishra has further submitted that the Learned Single Judge was not justified in not passing any order on the Civil Application claiming benefit as required under Section 17-B of the Industrial Disputes Act. For this purpose, he relied on the decision of the Hon'ble Supreme Court in the case of *R. K. Nigam V/s. Swadeshi Cotton Mills and another, 2004 SCC (L & S) 195* wherein paragraph 5 of the judgment makes it mandatory while observing "in those circumstances, it was not proper for the High Court to deny wages accruing to the appellant from the date of award of the Labour Court." Operative part of the order of the Hon'ble Supreme Court is set out hereunder :-

"We find no substance in the contention advanced on behalf of the respondent and allow this appeal. We, therefore, set aside the order of the High Court to the extent it denies back wages contrary to the award of the Labour Court. Payment of wages will now have to be computed and paid from one month

after the award before which the appellant should have been reinstated."

17. Mr. Mishra further relies on the decision of the Hon'ble Supreme Court in the case of *C. H. Saraiah V/s. Executive Engineer, 1999 (9) SCC 229* wherein it is held that the High Court has no jurisdiction to direct non-compliance of Section 17-B of the Act. He further relies on the decision of the Punjab & Haryana High Court reported in 2002 LLJ 16 wherein it is held that the amount paid under Section 17-B is for maintenance and there is no provision in this section that he could not claim the amount after the writ petition before the High Court was over. He further relies on the decision of the Kerala High Court reported in 2001 LIC 2002 wherein it is held that the workman are entitled for wages as required under Section 17-B even if there is a closure of the establishment. He further relies on the decision of this Court in the case of *University Granth Nirman Board V/s. Udesinh Togaji Solanki, 2003 (1) GLH 628* wherein it is held that while

considering the question of back wages for intervening period, the Labour Court or the Industrial Court has to consider as to whether the workman has been gainfully employed or not during the intervening period. Mr. Mishra further relies on the decision of the Hon'ble Supreme Court in the case of *Workmen of Hindustan Vegetable Oil Corporation Limited V/s. Hindustan Oil Corporation Limited and others, 2000 (3) LLM 1075* wherein the Hon'ble Supreme Court has set aside the order under challenge to the extent it requires dismissal of the writ petition and Section 17-B application together and directed that 17-B application should be disposed of with great promptitude and before dismissal of the writ petition. He has, therefore, submitted that the impugned order and judgment passed by the Learned Single Judge is contrary to the law laid down by the Hon'ble Supreme Court as the Learned Single Judge without deciding the application for 17-B decided the main petition.

18. Mr. Mishra has further submitted that the Learned

Single Judge was not justified in remanding the matter back just by ordering to pay sum of Rs.1,000/- to each of the workman particularly when several litigations as narrated above have been initiated by the workmen. The payment of petty sum of Rs.1,000/- cannot be said to be just and proper and would not meet the ends of justice in remanding the matter back to the Industrial Tribunal for adjudication. It is also not just and proper on the part of the Learned Single Judge to firstly admit the petition on 06.03.2007 and finally disposed of the same on 23.03.2007 without affording reasonable opportunity to tender the affidavit of more than 300 workers about the benefit available under Section 17-B of the Act. He has, therefore, submitted that the impugned order passed by the Learned Single Judge while exercising powers under Articles 226 & 227 of the Constitution of India deserves to be quashed and set aside and the award of the Industrial Tribunal, Rajkot ought to have been restored.

19. So far as the merit is concerned, Mr. Nanavati has submitted that the award was a nullity as the Tribunal has answered the matters which were not referred to the Tribunal against the industries which were not party before the Tribunal. The workmen went on an illegal strike while the workmen maintained that there was an illegal lock-out by the respondent Company. An illegal dispute was raised in that regard and Reference Order was issued as to whether the closure declared by the Company was legal and whether the workmen were entitled to wages till they were reinstated in service. He has further submitted that even from the pleadings of the appellant during the pendency of the petition being Special Civil Application 3988 of 2005, the workmen who were party to the Reference were not only the employees of the respondent Company but also employees of M/s. SRS Bearing Industries and SRS Engineering Industries. The respondent Company has raised a specific defence that the Company and the other two firms were separate and distinct legal entities and the respondent Company

cannot be saddled with the liability in respect of the workmen employed by the firms, despite which and without examining the said facts, the reference came to be decided against the respondent Company. He has further submitted that the Industrial Tribunal specifically held that both the firms were part of the Company and that all the three had a singular existence and thus decided to reinstate all the workmen in service and to pay back wages and saddled the entire liability upon only the respondent Company. He has further submitted that the present appellant has specifically contended before the Learned Single Judge that the appellant Union raised charter of demands against all the three industries, i.e. respondent Company as well as the firms, despite which the Reference Order was made against the respondent Company alone. He has, therefore, submitted that the Learned Single Judge has rightly concluded that the charter of demands was addressed only to the respondent Company and the said demand does not refer to the two firms. He has further submitted that the Learned Single Judge also

went on to observe that though no specific reference was made and though two firms were not party before the Tribunal, the Tribunal has recorded a specific finding that all the three industries had functional integrity and that all the 350 workmen though admittedly were not the employees of the Company, had a claim against the Company. The Learned Single Judge has, therefore, rightly concluded that this is a manifest error. This error goes to the root of the matter and is apparent on the face of the order, which the Learned Single Judge was examining. He has, therefore, submitted that the matter was rightly remanded to the Tribunal and no interference is called for in that order passed by the Learned Single Judge.

20. As far as the issue regarding payment under Section 17-B of the Act is concerned, Mr. Nanavati has submitted that looking to the peculiar facts of the case, the application under Section 17-B cannot be decided since the first and basic contention of the respondent Company was that the liability of

reinstatement and back wages of three separate and independent establishments has been saddled upon one company i.e. respondent Company. Therefore, even assuming that 17-B has to be prayed before the hearing of the main petition can commence, the Learned Single Judge would have had to go into a long drawn examination of each of the employees applying under Section 17-B to determine as to whether such employee was real employee of the respondent Company or not. It was the submission of the respondent Company that all the three establishments are separate and have separate legal entities and identities and as held by the Hon'ble Supreme Court that though two units were situated near each other, controlled by the same employer, business being carried on was identical and that even though PF Accounts and ESI Accounts had common numbers and that settlement on similar terms have been entered by the management of both the units with their respective workmen, it is not necessary to hold that two are one and the same. Thus, even going by the above principle laid down by

the Hon'ble Supreme Court in the case of Isha Steel Treatment, Bombay V/s. Association of Engineering Workers Bombay and Another, reported in 1987 (2) SCC 203 for deciding an application under Section 17-B, the Learned Single Judge would have to first determine that the concerned employee is an employee of the respondent Company before saddling the liability.

21. Mr. Nanavati has further submitted that in any event, even with respect to the decision as to whether or not Section 17-B application ought to be decided before deciding the main petition, this Court has decided the said issue in the case of *Navin Fluorine Industries V/s. B. M. Shah, 2003 (3) GLH 189* wherein it is held that there is no doubt that the legislature has placed provisions of Section 17-B on the statute book with a definite purpose and those provisions are to be followed to achieve the object when the circumstances of the case so warrant. But then this Court is required to consider as to in the facts and circumstances of the present case, any

order under Section 17-B is warranted at this stage when the Court is taking final hearing of the case. The answer is “No”. The reason is simple. The provision of Section 17-B is only to see that the employer does not deprive a workman of the fruits of an order of reinstatement which is ordered after a full fledged adjudication by filing an appeal and by obtaining an injunction. This provision is placed on the statute book because of an unhappy situation prevailing in the Courts that the appeals take longer time to get heard and dispose off. The provision can never be pressed into service when the Court is able to take final hearing of the matter, more so in the facts of this case. The Learned Single Judge has adopted the above principle as enumerated in the judgment and hence, since the main petition was being disposed of, the Learned Single Judge did not see it fit to decide 17-B application as the said application would fail since the award would not survive.

22. Mr. Nanavati has further submitted that even if it is

argued that Section 17-B wages are payable, the same wages would be payable from and onwards the date of filing such proceedings by the employer to challenge the award. For this purpose, he relied on the decision in the case of *Kanjibhai Punjabhai Parmar V/s. State of Gujarat reported in 2005 (1) GLR 232* and in the case of *Levcon Instruments Private Limited V/s. State of West Bengal, 2002 (2) LLJ 725*. He has, therefore, submitted that in any event, if at all 17-B is payable having regard to the powers entitling such payment to an employee, the said amount would be payable from the date of proceedings challenging the award by the employee. He further relied on the decision of this Court in the case of *Kanjibhai Punjabhai Parmar V/s. State of Gujarat reported in 2005 (1) GLR 232* for the proposition that in case of gross delay in filing the requisite affidavit, the Court can deprive of the workman of the benefits of Section 17-B to the extent of the delay.

23.Based on the aforesaid submissions, Mr. Nanavati

has strongly urged that even on merits also, the appellant does not have any case which calls for any interference by this Court while exercising its appellate powers under Clause 15 of the Letters Patent and, therefore, the appeal deserves to be summarily dismissed.

24. After having heard learned counsels appearing for the respective parties at length on both the questions, namely, maintainability of Letters Patent Appeal as well as on merits of the matter, and after having considered the authorities cited in this behalf and also after having minutely perused the impugned judgment of the learned Single Judge as well as the orders of the Court / Tribunal below, we are of the view that the present Appeal filed under Clause-15 of Letters Patent against the impugned judgment and order of the learned Single Judge is not maintainable, as in our opinion the learned Single Judge exercised the writ jurisdiction under Article-227 of the Constitution of India. Apart from the fact that the Appeal is liable to be dismissed on

the ground of non-maintainability, even on merits, our interference is not warranted while exercising our appellate jurisdiction under Clause-15 of the Letters Patent.

25. As far as maintainability of the Appeal under Clause-15 of the Letters Patent is concerned, we have discussed this issue in great detail in our judgment of even date rendered in Letters Patent Appeal No.1205 of 2006 in the case of Dilipbhai Maneklal Vyas V/s. Torrent Power A.E.C. Co., and took the view that the Appeal is not maintainable against the order and judgment of the learned Single Judge where the learned Single Judge has exercised his jurisdiction under Article-227 of the Constitution of India. As far as factual matrix of the present case is concerned, we are of the same view that the learned Single Judge has exercised the jurisdiction under Article-227 of the Constitution of India. We, therefore, hold on the basis of reasons assigned by us in the above referred judgment that the present Appeal is not maintainable as it is filed against the

order and judgment of the learned Single Judge, who has exercised his jurisdiction under Article-227 of the Constitution of India. Moreover, the facts of the present case and after appreciation thereof by the learned Single Judge, the direction issued while disposing of the writ petition, clearly indicate that the learned Single Judge has exercised her jurisdiction under Article-227 of the Constitution of India. The learned Single Judge has not merely quashed and set aside the impugned judgment and award dated 30.8.2002 passed by the Industrial Tribunal, Rajkot in Reference (IT)No.146 of 2002, but she has remanded the said reference to the Tribunal below for decision afresh in respect of the workmen of the respondent Company, namely, M/s. Rushabh Precision Bearings Limited. The learned Single Judge has further clarified that both the parties shall be at liberty to approach the appropriate Government to suitably modify the reference made to the Tribunal. She has further clarified that the workmen of the aforesaid SRS Bearing Industries and SRS Engineering Industries

shall be at liberty to raise industrial dispute against the respective industry. It is further clarified that if such a dispute is raised, the appropriate Government shall consider and process the same in accordance with law. The learned Single Judge has also directed that the sum of Rs. 20 lakhs deposited in this Court and invested by the *registry* shall continue to be invested until the Reference is heard and decided afresh by the Tribunal, and shall be subject to the decision of the Tribunal. The learned Single Judge has also issued direction to the *registry* to transfer the said sum of Rs. 20 lakhs to the Tribunal below. She has further directed that respondent / original petitioner-Company shall pay a cost of Rs. 1000/- to each workman employed by it i.e., the employees of the petitioner-Rushabh Precision Bearings Limited within four weeks from the date of the judgment. Looking to the tenor of directions and observations, we are of the view that such directions or observations can be issued or made only while exercising writ jurisdiction under Article-227 of the

Constitution of India. In the case of **Suryadevrai (Supra)** the Hon'ble Supreme Court has clearly made a distinction that while exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside any order or proceedings of the subordinate Courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable direction so as to guide the subordinate Court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate case itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case. In consonance with this observation, the learned Single Judge has clearly directed the Industrial Tribunal to decide the reference qua the workmen of the respondent company only and so far as other two units are concerned the directions are issued to make reference separately. In this view of the

matter, there is no doubt or dispute about the fact that the learned Single Judge has exercised her jurisdiction under Article-227 of the Constitution of India and hence the present Appeal filed against the said order and judgment of the learned Single Judge is not maintainable.

26. Once having held that the present Letters Patent Appeal is not maintainable under Clause-15 of the Letters Patent, as the learned Single Judge has passed the impugned judgment and order in exercise of his jurisdiction under Article-227 of the Constitution, it is not necessary for us to go into the merits of the matter. However, since the learned counsels appearing for the parties have addressed us on the merits of the matter, we have also undertaken the task of discussing the merit in brief and we are of the view that the learned Single Judge has passed a just and proper order and it is based on proper consideration and appreciation of the entire material and evidence on record and all the contentions of the parties were properly taken care of and hence the

impugned order and judgment does not suffer from any error or infirmity either of facts or in law.

27. The facts clearly reveal that the workmen who were party to the reference were not only the employees of the respondent company but also employees of M/s.SRS Bearing Industries and SRS Engineering Industries. The respondent company has raised a specific defense that the company and the other two firms were separate and distinct legal entities and the respondent company cannot be saddled with the liability in respect of the workmen employed by the firms. Despite these facts and without examining the said facts, the reference came to be decided against the respondent company.

28. An issue was also raised before the Industrial Tribunal that the respondent Company was before BIFR, so pending the reference no proceeding could have been initiated against the respondent company by virtue of the provision contained in Section-22 of SICA. It is true that the petition was filed late.

However, in view of the fact that the Hon'ble Supreme Court has granted SLP and permitted the respondent Company to deposit Rs.20/- lacs. The said order is certainly having some bearing on the question of entertaining a belated writ petition, as in any case the proceedings which have reached upto the Hon'ble Supreme Court were arisen out of this very writ petition. As far as question of payment under Section-17B is concerned, the learned Single Judge has clearly observed that the hearing of the application made in extending benefit under Section-17B of the Act should be heard at the earliest and should not have postponed until hearing and decision on the main matter. The learned Single Judge has, however, did not agree with the submissions of Mr. Mishra that the main matter ought not to be heard and decided immediately so as to allow the workmen to avail of the benefit extending under Section-17B of the Act. The learned Single Judge has assigned a very sound and convincing reason for arriving at this conclusion. Since she has observed that the respondent

Company has challenged the impugned award after a considerable delay the respondent company allowed the workmen to take out several legal proceedings and the courts to make orders from time to time. The respondent Company was facing financial crisis, and it was declared sick unit and was before the BIFR for rehabilitation. The learned Single Judge has further recorded that in the meantime, the workmen pursued the matter further, applied for execution of the award and obtained the impugned recovery certificate. The workmen also challenged the attempt of the company to dispose of its plant and machinery. Several orders came to be made from time to time in favour of the workmen which culminated in deposit of Rs.20 lacs by the Company in the registry of this Court. The learned Single Judge has, therefore, taken the view that the delay or the orders made in the other proceedings should not allow an illegal order to be sustained and come to the conclusion that the Tribunal below exceeded its jurisdiction in holding that the company and the firms had functional integrity and had singular

existence and that the company was liable not only to its own employees or the workmen but also to the workmen employed by the firms. The learned Single Judge has, therefore, rightly come to the conclusion that the findings of the Industrial Tribunal is unwarranted and cannot be sustained. Inspite of repeated objection raised by the respondent Company, the Union and the Tribunal below allowed the reference to be proceeded against the company without seeking reference against the firms. In above view of the matter, if the learned Single Judge has proceeded with hearing of the main petition instead of hearing of an application preferred under Section-17B of the Industrial Disputes Act, it cannot be said that the action of the learned Single Judge is unjustified and it calls for an interference of this Court while exercising its appellate jurisdiction under Clause-15 of the Letters Patent. We, therefore, do not see any justification even on merits in the present Appeal. Considering the legal submissions and authorities referred to herein above we are of the view that the impugned judgment and

order of the learned Single Judge quashing and setting aside the order of the Industrial Tribunal does not require any interference by us either on the ground of legality or on merits.

29. In the above view of the matter, the present Appeal is liable to be dismissed on both these grounds of non-maintainability as well as on merits and it is accordingly dismissed without any order as to costs.

30. Since Appeal is dismissed, Civil Application No.6168 of 2007 does not have any survival value and it is accordingly disposed off.

[A. M. KAPADIA, J.]

[K. A. PUJ, J.]

Savariya